

ORIGINAL

FILED

April 27 2015

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: AF 09-0688

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. AF 09-0688

FILED

IN RE THE PETITION FOR ADOPTION OF RULE
5.5(d)(1) OF THE MODEL RULES OF
PROFESSIONAL CONDUCT

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NORTHWESTERN ENERGY'S COMMENTS

NorthWestern Corporation, d/b/a NorthWestern Energy, a Delaware Corporation ("NorthWestern Energy") respectfully submits its comments in support of the Montana Petroleum Association's Petition for Adoption of Rule 5.5(d)(1) of the Model Rules of Professional Conduct ("MRPC") (the "Petition").

NorthWestern Energy is a publicly traded electric and natural gas utility with operations in and providing service to the states of Montana, South Dakota, Nebraska, and to Yellowstone National Park.¹ NorthWestern Energy's electric and natural gas operations are regulated by the states in which it operates and provides service, in particular the Montana Public Service Commission in Montana, the South Dakota Public Utilities Commission in South Dakota, and the

¹ Notably South Dakota and Wyoming have adopted nearly the same language as proposed in the Petition (*see*, South Dakota Rules of Professional Conduct Rule 5.5 and Wyoming Rules of Professional Conduct for Attorneys at Law, Rule 5.5(d)). Nebraska has also adopted nearly the same language, adding to it a reference to the Nebraska process for registration of in-house counsel (*see*, Nebraska Rules of Professional Conduct §3-505.5)).

Nebraska Public Service Commission in Nebraska.² NorthWestern Energy's recently acquired hydroelectric projects in Montana along with its electric and natural gas transmission operations are largely regulated by the Federal Energy Regulatory Commission. Finally, because NorthWestern Energy is a publicly traded company, it is also regulated by the Securities and Exchange Commission and the New York Stock Exchange.

Given the highly regulated nature of NorthWestern Energy's business, its primary legal needs require attorneys experienced in public utility operations and regulation from state and federal law perspectives. To serve these needs, it presently employs eight attorneys as in-house counsel, six in its Helena, Montana, offices and two at its corporate support office in Sioux Falls, South Dakota. NorthWestern Energy also regularly engages outside counsel to represent it in litigation and other matters in the states where it conducts business.

In its consideration of the Petition, this Court will evaluate the effects of the proposed revision to Rule 5.5 of the MRPC on the employer/client of in-house counsel and on third parties. When it does so, it will see that the proposed revision poses little risk to the employer/ client, who might employ in-house counsel not

² Because Yellowstone National Park is a federal enclave, NorthWestern Energy contracts directly with the Park and is not subject to the jurisdiction of the Wyoming Public Service Commission.

licensed in Montana, and no greater risk to third parties than is present when hiring in-house counsel licensed in Montana.

An employer, like NorthWestern Energy, is uniquely qualified to evaluate the competency of its in-house counsel through the hiring process and during the course of the in-house counsel's employment. As noted, NorthWestern Energy's legal needs as a public utility require attorneys experienced and competent in public utility operations and regulation. NorthWestern Energy focuses its hiring process on identifying and hiring attorneys with such experience and competencies. Once hired, in-house counsel works exclusively for NorthWestern Energy, allowing for day-to-day, full-time interaction with and oversight of the employer/client. As a result of this interaction and oversight, in-house counsel develops detailed and intimate familiarity with NorthWestern Energy's business and the specialized legal issues it may face. It also allows NorthWestern Energy to develop a familiarity with its in-house counsel's competencies. This degree of familiarity between a client and an attorney cannot develop other than through an employment relationship. Through the hiring process and day-to-day interaction between the employer/client and in-house counsel, the risk to the employer/client of hiring in-house counsel, not licensed in Montana, is negligible, and allows the employer/client to hire and develop in-house counsel competent and experienced in the employer/clients' business and specialized legal needs. The revisions to

Rule 5.5, MRPC as requested in the Petition eliminates any risk that in-house counsel, not licensed in Montana, might be perceived to be engaging in the unauthorized practice of law.

The proposed revision to Rule 5.5 MRPC poses no additional risk to the public. Regardless of whether an attorney is licensed in Montana, if he or she provides legal services in the State of Montana, he or she is obligated to adhere to the MRPC, just the same as an attorney licensed in Montana. Rule 8.5 MRPC provides in part as follows:

A lawyer not admitted to practice in this State is subject to the disciplinary authority of this State for conduct that constitutes a violation of these Rules and that: (1) involves the practice of law in this State by that lawyer; (2) involves that lawyer holding himself or herself out as practicing law in this State; (3) advertises, solicits, or offers legal services in this State; or (4) involves the practice of law in this State by another lawyer over whom that lawyer has the obligation of supervision or control.

In conducting its evaluation of the proposed revision to Rule 5.5 MRPC, NorthWestern Energy hopes this Court recognizes the revision poses little risk to the employer/client and no greater risk to third parties than is present when in-house counsel is licensed in Montana and would help an employer, such as NorthWestern Energy, in recruiting attorneys experienced and competent in the areas critical to its business. For these reasons, NorthWestern Energy supports the Petition of the Montana Petroleum Association and encourages the Court to adopt the proposed revisions to Rule 5.5 MRPC.

Respectfully submitted this 27th day of April, 2015.

NORTHWESTERN ENERGY

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